



United States Department of the Interior
FISH AND WILDLIFE SERVICE

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December 11, 2006

In Reply Refer To
FWS/R6

Memorandum

To: Mitch King, Regional Director, U.S. Fish and Wildlife Service, Region 6,
Lakewood, CO

From: Larry Crist, Field Supervisor, Utah Field Office, Ecological Services, Region 6,
West Valley City, UT *L. Crist*

Subject: Findings and Recommendations on Issuance of an Incidental Take Permit for the
Utah prairie dog to the Cedar City and the Paiute Indian Tribe for the Cedar Ridge
Golf Course and the Paiute Indian Tribal Lands Habitat Conservation Plan

This statement of Findings and Recommendations documents the conclusions of the Fish and Wildlife Service (Service) with respect to issuance of an Incidental Take Permit under section 10 (a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531-1544), in response to an application from the Cedar City Corporation and the Paiute Indian Tribe (the Applicants), Iron County, Utah.

I. DESCRIPTION OF PROPOSAL

Cedar City Corporation and the Paiute Tribe of Utah have submitted an application to the Service for Permits to authorize incidental take of Utah prairie dogs in accordance with section 10(a)(1)(B) of the Act. The Applicants have prepared a Habitat Conservation Plan (HCP) for the Cedar Ridge Golf Course and the Paiute Tribal Lands which has been submitted in support of their permit application.

The Service proposes to issue two permits, one to Cedar City Corporation and one to the Paiute Tribe, to incidentally take Utah prairie dogs in normal management activities of the golf course and high use recreational areas of the adjacent Paiute tribal lands. A thorough description of the action can be found in the HCP itself (section 2, pages 7 and 8) and is incorporated herein by reference. The HCP includes several avoidance, minimization, and mitigation measures that are considered to be part of the proposed action. The avoidance and minimization measures are

contained in section 5 of the HCP and the mitigation measures are contained in section 6 of the HCP and are incorporated herein by reference.

The proposed action is the management of the Cedar Ridge Golf Course and the Paiute Tribal lands free of Utah prairie dogs. This would involve live trapping and translocation of the animals from these areas to translocation sites approved by the Utah Prairie Dog Recovery Team. Translocation would be carried out for two consecutive years (during translocation season). Concurrently, 303 acres of occupied and potential Utah prairie dog habitat will be protected in perpetuity under a conservation easement held by the Utah Division of Wildlife Resources (UDWR). Habitat restoration will occur on 198 acres of the 303 acres in efforts to increase Utah prairie dogs. Once restoration actions have met specific criteria identified in the HCP, the Paiute Tribal lands will initiate translocation of Utah prairie dogs off of their lands onto approved translocation sites within the West Desert approved by the Recovery Team. All translocation efforts will occur under the guidance of UDWR as per the Recommended Translocation Procedures approved by the Utah prairie dog Recovery Team. After two consecutive years of translocation, the proposed action includes the use of lethal traps to remove remaining Utah prairie dogs. However, lethal take of Utah prairie dogs is not incidental to the otherwise legal activity and can not be permitted under section 10(A)(1)(a). Therefore, the Applicants have agreed to use only live trapping and translocation for the management of Utah prairie dogs on the covered lands.

The proposed mitigation is described on page 14 of the HCP and includes a 303 acre parcel of land surrounded by BLM lands. The parcel is currently occupied by a small colony of Utah prairie dogs. The parcel has the potential to support a much larger colony with habitat restoration. The parcel is within three miles of one of the largest colonies within the West Desert and will provide connectivity with and between several colonies on adjacent BLM lands.

The biological goals and objectives are described on page five of the HCP and are as follows: (1) Protection of 303 acres of land (Wild Pea Hollow) which will provide Utah prairie dog habitat in perpetuity. (2) Improvement of 198 acres of habitat at Wild Pea Hollow through various means including but not limited to burning, Dixie harrowing and seeding to enhance and maintain habitat; (3) Contribute to the establishment of new Utah prairie dog colonies on public lands within the West Desert Recovery Area.

Documents reviewed in the preparation of these findings and recommendations include the HCP the EA, and the intra-Service section 7 Biological Opinion (File No. 6-UT-06-F-022). All documents are incorporated by reference, as described in 40 CFR § 1508.13.

ANALYSIS OF EFFECTS

The full description of the effects of the action is described in Section 4 of the HCP. A total of approximately 18 acres of occupied habitat, 13.5 acres on the golf course and 4.5 acres on the tribal land will be permanently lost and an estimated total of 604 animals through harm and harassment as defined in the Act. Although there are over 12,000 acres of mapped habitat (habitat that has been occupied and mapped some time since 1973) within the action area (west desert recovery area), the area within 0.3 miles of the service area is developed or is mountainous and not suitable for prairie dogs. The colonies located on the Cedar Ridge Golf Course and the

Paiute tribal lands are fragmented and becoming more isolated as development continues within Cedar City. The viability of this colony is questionable due to this isolation and the unnatural conditions existing on these lands. Indirect impacts could occur from prairie dogs migrating in from other areas adjacent to the golf course and tribal lands. However, all of the adjacent lands that are occupied by Utah prairie dogs are covered under the Iron County HCP. As they are developed under the HCP, they will no longer contribute to the dogs at the golf course and tribal lands. The effects of the proposed action include the protection in perpetuity of Wild Pea Hollow, 303 acres of land which will minimize fragmentation of the West Desert Recovery Area and provide additional habitat for expansion and dispersal of adjacent colonies.

The effects of the proposed action on Utah prairie dogs are fully analyzed in the Service's Biological Opinion for the proposed action, herein incorporated by reference. 18 acres of occupied habitat and 276 acres of potential habitat could be lost under these permits.

II. PUBLIC REVIEW

The Service published a Notice of Availability of the Draft Environmental Assessment and Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Cedar City Corporation and the Paiute Tribal Lands in Iron County, Utah, in the *Federal Register* (69 FR 1998) on May 15, 2006. Publication of the notice initiated a 90-day comment period, which closed on August 15, 2006. We received three comment letters regarding the proposed action during the public comment period, one from the Bureau of Indian Affairs, one from Forest Guardians and one on behalf of John Hoogland from Forest Guardians.

Our responses to the comments are addressed in our Finding of No Significant Impact pursuant to the National Environmental Policy Act. Their comments and our responses can be found in that document, and are incorporated herein by reference.

III. INCIDENTAL TAKE PERMIT CRITERIA - ANALYSIS AND FINDINGS

Section 10(a)(2)(A) of the Act specifically mandates that "no permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant submits to the Secretary a conservation plan that specifies--(i) the impact which will likely result from such taking; (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps; (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and (iv) such other measures as the Secretary may require as being necessary or appropriate for the purposes of the plan."

Section 10(a)(2)(B) of the Act mandates that the Secretary shall issue a permit if she finds "...after opportunity for public comment, with respect to a permit application and the related conservation plan that---(i) the taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will assure that adequate funding for the plan will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) the measures, if any, required under subparagraph (A)(iv) will be met; and she has received such other assurances as she may require that the plan will be implemented."

With regard to this specific project, permit actions, and section 10(a)(2)(B) requirements, the Service makes the following findings:

1. The taking will be incidental.

Any take of the Utah prairie dog will be incidental to otherwise lawful maintenance activities of the golf course and high recreation areas associated with the Paiute tribal lands. Although the proposed action included lethal control of Utah prairie dogs, lethal control is not incidental to the otherwise legal actions identified in the HCP. The Service discussed this issue with the Applicants and informed them that the permit would not authorize any lethal control of Utah prairie dogs.

2. The Applicant will, to the maximum extent practicable, minimize and mitigate the impact of taking.

Sections 5 and 6 of the HCP contain measures to avoid and minimize impacts and to mitigate impacts to Utah prairie dogs that occur on the covered lands. These measures include intensive live trapping and translocation of Utah prairie dogs from the covered lands to approved translocation sites as directed by the Utah Prairie Dog Recommended Translocation Procedures. While there will be a loss of 18 acres of occupied habitat, it is isolated and fragmented habitat, surrounded by Cedar City development or high mountains to the west which effectively render these colonies ineffective in their contribution to the metapopulation dynamics of Utah prairie dogs. Mitigation of impacts consists of the permanent protection of 19 acres of occupied habitat and 198 restored habitat with an additional 86 acres of surrounding lands that are unlikely to be occupied but will contribute to the quality of the surrounding habitat by providing foraging habitat and dispersal habitat. This mitigation will contribute to recovery because the land is not fragmented by expanding development in Cedar City.

We conclude that Applicants have minimized and mitigated the impacts of take to the maximum extent practicable. These conclusions were reached in recognition of the following considerations--1) effects of the action, including the proposed mitigation of the preservation of 303 acres of private lands which includes the restoration of 198 acres 2) the threatened status of the Utah prairie dog 3) the environmental baseline.

3. The Applicant will ensure adequate funding for the HCP and provisions to deal with unforeseen circumstances will be provided.

All costs associated with the minimization and mitigation measures described in sections 5 and 6 of the HCP have or will be covered by the Applicants. The costs associated with trapping include equipment and personnel to trap and translocate Utah prairie dogs during the annual two month translocation season, for the life of the permit. These costs are expected to be minimal, less than \$7,000.00 annually, and will be funded through the applicants annual budgets. Each applicant will cover the cost associated with their lands.

The 303 acres of Wild Pea Hollow have already been acquired for protection. A conservation easement protecting the habitat in perpetuity will be granted to the State of Utah prior to the issuance of the permit. Habitat restoration costs have been undertaken and paid for on 198 acres of Wild Pea Hollow. Efforts to monitor the restoration actions taken are currently underway.

4. The taking will not appreciably reduce the likelihood that the species will survive and recover in the wild and will not adversely modify critical habitat.

The Act's legislative history establishes the intent of Congress that this issuance criteria be based on a finding of "not likely to jeopardize" under section 7(a)(2) (50 CFR § 402.02). As a result, approval of the Cedar City Corporation and the Paiute Tribal permit application has been reviewed by the Service under section 7 of the Act. In the Biological Opinion, which is incorporated by reference, the Service concluded that issuance of the Permit to the Applicants would not likely jeopardize the continued existence of the Utah prairie dog and would not be likely destroy or adversely modify critical habitat as critical habitat has not been designated.

This determination is based on--(1) The proposed action will affect 0.2 % of occupied habitat. (2)The golf course and tribal land prairie dog colonies are considered isolated and not essential for the recovery of the species. (3) The identified goal of the HCP to protect 303 acres of habitat in perpetuity will offset the loss of habitat at the golf course and the tribal lands. (4)The identified goal to enhance 198 acres of that 303 acres will contribute to recovery of the species by improving habitat to meet vegetation guidelines proposed by the Utah prairie dog recovery team. (5) The identified goal to contribute to the establishment of Utah prairie dog colonies on public land through the translocation of animals from the golf course and tribal lands contributes to recovery goals identified in the 1991 Recovery Plan.

5. Other measures, as required by the Director of the Service, have been met.

The HCP incorporates all elements determined by the Service to be necessary for approval of the HCP and issuance of the Permit.

ALTERNATIVES

Three alternatives were identified in the proposed HCP--1) no action; 2) on-site mitigation on the golf course roughs; 3) preferred (proposed) alternative. The HCP details these alternatives as

well as the reason the proposed alternative was chosen and the other three alternatives were rejected as infeasible.

IV. SPECIES ASSURANCES - ANALYSIS AND RECOMMENDATIONS

In addition to receiving incidental take authorization for the listed species, the Applicants have requested assurances that no additional measures beyond those agreed to in the HCP will be necessary. The Department of the Interior's "No Surprises" regulations (50 CFR § 17.22(b)(5) and 17.32(b)(5)) provide assurances to non-Federal landowners participating in Habitat Conservation Planning that, except under extraordinary circumstances, no additional mitigation beyond that in the HCP will be required from an HCP permittee for species adequately covered by a properly implemented HCP. This policy applies to species adequately covered, and makes no distinction between listed and unlisted species. Species are adequately covered if the HCP addresses the conservation of the species and its habitat as if it is listed and if all section 10 issuance criteria have been met.

The Biological Opinion prepared by the Service includes the Service' assessment of the Utah prairie dog. The Service has determined that the Utah prairie dog is adequately conserved by Habitat Conservation Plan For the Cedar Ridge Golf Course and the Paiute Tribal Lands, and that the section 10 issuance criteria have been met for this species.

V. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS

The Service has no evidence that the Permits should be denied on the basis of the criteria and conditions set forth in 50 CFR § 13.21(b)-(c). The Applicants have met the criteria for the issuance of the Permits and do not have any disqualifying factors that would prevent the Permits from being issued under current regulations.

VI. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings and analysis with respect to the proposed action, I recommend the issuance of two section 10(a)(1)(B) incidental take permits to the Cedar City Corporation and the Paiute Tribe in accordance with the HCP for incidental take of Utah prairie dog. I recommend assurances of no further mitigation requirements from the Applicants for covered species as provided for in the HCP.

CONCUR: _____
 ASSISTANT REGIONAL DIRECTOR, ECOLOGICAL SERVICES DATE

cc: ES/Salt Lake City, UT
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